

3330 Rogers Avenue LLC : BEFORE THE  
Petitioner : ZONING BOARD OF  
Zoning Board Case No. 1093M : HOWARD COUNTY, MARYLAND

: :

DECISION AND ORDER

On July 20, 2011 the Zoning Board of Howard County, Maryland considered the petition of 3330 Rogers Avenue LLC for approval of a proposed Preliminary Development Plan and Criteria for a Mixed-Use Development Overlay (MXD-6) of 26.41 acres of POR-MXD-6-zoned land, located on the West side of Rogers Avenue approximately 400 feet southeast of US 40, and at the terminus of Ellicott Center Drive approximately 650 feet northeast of Ridge Road, Tax Map 24, Grid 6, Parcels 847 and 852; 3330 Rogers Avenue and 3355 Ellicott Center Drive, in the Second Election District of Howard County.

The notice of the hearing was advertised, the subject property was posted, and adjoining property owners were mailed notice of the hearing, as evidenced by the certificates of posting, advertising, and mailing to adjoining property owners, all of which were made part of the record. Pursuant to the Zoning Board's Rules of Procedure, all of the reports and official documents pertaining to the petition, including the petition, the Technical Staff Report of the Department of Planning and Zoning, and the Planning Board's Recommendation, were made part of the record. Both the Department of Planning and Zoning and the Planning Board recommended approval of the petition with minor revisions.

The Petitioner was represented by Sang Oh, Esquire. All of Petitioner's testimony and evidence was presented through two witnesses, Charles Alexander, an architect and land planner and Joseph W. Rutter, one of the developers of the subject property and the former Director of DPZ.

After careful evaluation of all the information presented, the Zoning Board of Howard County makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. Petitioner proposes that a proposed Preliminary Development Plan ("PDP") and Criteria for the entire 26.41 acre POR-MXD-6-zoned subject property be approved, thus meeting the requirement of Section 127C.2.a of the Howard County Zoning Regulations ("HCZR") that the PDP encompass at least 40% of the area of all contiguous MXD-zoned parcels or at least 25 acres, whichever is greater. In this case the 25 acre minimum District size requirement is applicable and the subject property, which is 26.41 acres, meets this requirement.

2. The Petitioner requests approval of a PDP for a Mixed Use Development, which would consist of 2.61 acres of Employment Area (9.9% of the gross area of the PDP), 12.34 acres of Residential Use Area (46.7% of the gross area of the PDP), 9.46 acres of Open Space Area (35.8% of the gross area of the PDP) and 2 acres used for roads (7.6% of the gross area of the PDP) on the approximately 26.41 acre subject property, all of which acreages meet the minimum requirements for percentage of gross area of Mixed Use Development of Sections 127C.3.a. and 127C.6.a. of the HCZR. The PDP shows that the 168 residential dwelling units proposed to be developed are divided between 136 single-family attached dwelling units and 32 Multi-Family Age-Restricted

Units. Included within Petitioner's proposed 168 dwelling units is the requirement to provide 17 Moderate Income Housing Units ("M.I.H.U."), comprising 10% of the total number of dwelling units proposed for an MXD development for developments with a density greater than 2.7 dwelling units per gross acre as required by Section 127C.6.b.2. of the HCZR. Petitioner's proposed density for the proposed MXD development is 6.36 dwelling units per gross acre, which is less than the 7.11 dwelling units per gross acre which would be permitted as a matter of right based on the 1.25 dwelling unit per acre density bonus for the provision of age-restricted housing pursuant to Section 127.C.6.a. of the Zoning Regulations.

Petitioner proposes on its PDP and Criteria a Mixed Use Development called Ellicott Mills Overlook, a development of single-family attached and multi-family residential apartment buildings, a small employment retail area, two focal points and open space. As indicated by Mr. Alexander, the subject property is impacted by both a stream which bisects the subject property from southwest to northeast into two development areas east and west of the stream, and fairly steep hills. Mr. Alexander testified that Ellicott Center Drive, which will be a County planned and built road, will connect the two developed parts of the subject property and will also connect the existing terminus of Ellicott Center Drive with Rogers Avenue.

Mr. Alexander testified that the developer's plan took the development plan of Historic Ellicott City of building into hills as its model for how to develop the subject property, so that the development will be sensitive to the environment by building the several types of residential units into the hills to be at grade with ground, and thus

integrate the units into the subject property's topography. Mr. Alexander testified that the commercial building would be developed in a similar way. He noted that this plan of development will avoid mass grading of the site and will protect the wooded areas and streams on the property. Mr. Alexander presented a three dimensional model of the proposed development to illustrate this plan of building the development into the hills on the subject property.

The aforementioned development area east of the stream as shown on the plan will consist of a commercial area with an office-retail building of 17,000 square feet and a parking lot, a residential area to the south of the commercial area, with 99 single-family attached dwellings of four types, arranged along a combined private road and parking lot circulation system, and two focal points. The principal focal point is located north of the proposed commercial building and is a pavilion that could be used for a variety of functions, including picnics, seasonal activities or minor retailing such as farmer's markets, and similar uses. The other focal point is proposed to be located at the southwest corner of the intersection of Rogers Avenue with the proposed Ellicott Center Drive. This focal point is described as a "work of art" monument or pylon celebrating the historical significance of Ellicott Mills with images of Ellicott City.

Additionally, two recreational areas, #2 and #3, are located adjacent to the commercial areas. Recreational Area #3, along with Recreational Area 1, west of the stream, is proposed to include outdoor fitness system equipment as active recreation areas. Also, Open Space Lot 2, located north of proposed Ellicott Center Drive and east of

the stream, is the proposed location of the storm water management facility for the subject development.

The proposed development area on the plan west of the stream is much more irregularly shaped and consists of two roughly triangular areas, one north of, and the other west of, the existing age-restricted adult housing development, Park View at Ellicott City, on the adjoining property to the south which fronts on Ridge Road. The larger northern development area is proposed to contain 37 single-family attached dwelling units located along a combined private road and parking lot that curves in an arc between two points on Ellicott center Drive.

The proposed development west of Park View at Ellicott City consists of two 16 dwelling unit buildings for age-restricted adult housing, so that the location of the subject development's age-restricted dwelling units would be adjacent to the already existing age-restricted dwelling units.

Also mainly on the west side of the stream, to the north and west of Ellicott Center Drive, the plan proposes to locate Open Space Lot 1, which contains most of the stream and other environmental areas on the subject property. West of Open Space Lot is a one acre "Commercial Parcel" located adjoining U.S. 40, which is a parcel which could be used in conjunction with the County/Board of education shared service facility on adjoining parcel 1042.

Also on the west side of the stream, the plan proposes Recreational Area #1, which will contain the same type of recreational equipment as Recreational Area #3.

Open Space Lot 3 is the area south of Ellicott Center Drive that is the stream valley separating the east and west sides of the development, and like Open Space Lot 1 would mainly be subject to Forest Conservation easements.

Mr. Alexander and Mr. Rutter both provided testimony as to the fact that the proposed development served as a gateway to the Ellicott City Historic District and served as a transition between the US 40 Corridor and the Historic District, and that both of these concepts underlay the design of subject development, including its architecture, its sensitivity to the environment, modest commercial area and focal points.

3. The Petitioner, pursuant to Section 127C.4.b. of the HCZR proposes the following permitted uses on the PDP, for properties less than 75 acres:

- a. Uses permitted as a matter of right in the POR and B-1 Districts, only on the parcels designated for commercial uses.
- b. Single-family attached units.
- c. Apartments, age restricted.
- d. Private recreational facilities, such as swimming pools, basketball courts and tennis courts, reserved for the use of on-site residents and their guests. Such facilities may be located within condominium developments as well as within communities where all properties are included within recorded covenants and liens which govern and provide financial support for operation of the facilities.
- e. Other uses, similar to those above, approved by the Zoning Board on the Preliminary Development Plan.

The Petitioner confirmed that the uses permitted as a matter of right in the POR and B-1 Districts will be limited to areas designated as commercial areas on the plan, including the one acre parcel to be leased to Howard County.

4. The Petitioner, pursuant to Section 127C.5.a. and b. of the HCZR proposes the following accessory uses:

a. The accessory use provisions of Section 109 (the R-12 District) will be applicable to all residential uses.

b. The accessory use provisions of Section 115 (the POR District) and Section 122 will be applicable to all commercial uses.

5. The Petitioner proposes an Employment area consisting of 17,000 square feet which is a relatively modest amount of proposed employment land use, which the Board finds appropriate given the largely residential uses surrounding the subject property. The 6,600 square feet of retail space will be integrated with the 10,400 square feet of office space in the Employment area. Mr. Rutter testified that the commercial component of the proposed development was purposely small on this most minimal MXD District because it was designed to serve the immediate community only and was not meant to compete with the US 40 commercial corridor in any way.

6. The Petitioner proposes a maximum (FAR) of 0.14 within the 2.61 acres of Employment Area which results in a proposed maximum Employment use floor area of 17,000 square feet, with a maximum of 6,602.5 square feet for retail uses. Petitioner's proposed 6,600 square feet of retail meets this requirement. Petitioner's proposed FAR is below the maximum FAR of 0.50 permitted for MXD-6 Districts under Section 127C.7.a of the HCZR.

7. The Petitioner proposes 35.8 percent Open Space, 46.7 percent residential and 9.9 percent Employment land uses on its PDP, all of which are in excess of the minimum requirements of the MXD regulations. In addition, the Board finds this mix, including the proposed single-family attached and apartment residential uses, to be an appropriate mix of uses for this parcel given the small size of the subject property and the

varied mix of residential, commercial and government uses surrounding the subject property.

Mr. Alexander noted that both DPZ and the Planning Board recommended approval of the plan subject to the recommendations that an enhanced landscaped buffer be provided for the residential properties to the south of the subject property fronting on Ridge Road, and that an outdoor seating area be provided adjacent to the age-restricted adult housing apartment buildings. Mr. Alexander noted that both of these issues have been addressed by revisions to the Petitioner's plan. As to the enhanced landscaped buffer from the single-family detached homes, Mr. Reuwer, at the Planning Board, described it as a maximum four foot high retaining wall set back 10 feet from the property line with 25 evergreens of several different types planted along the property line as depicted on a document labeled "Ellicott Mills Overlook evergreen screen". Mr. Alexander also testified that this enhanced landscaped buffer combined with the large rear yards of the adjacent properties, the existing trees and the fact that the minimization of the scale and impact of the development's townhouses on these properties due to the building of the townhouses into the hill, all contributed to the compatibility of the proposed development with the single-family homes. The Planning Board found this revision to be acceptable, and the Board finds that the Petitioner, through these revisions, has adequately addressed the only comments expressed by DPZ and the Planning Board as to the Petitioner's deficiency in meeting the criteria for approval of its MXD development plan by the Zoning Board. As to any buffer between the Petitioner's proposed age-restricted adult housing and the existing age-restricted adult housing on the adjacent



Park View at Ellicott City development, Mr. Rutter testified that the Petitioner and the developer of the adjacent property, had agreed to a screening wall between the two properties since it was desirable for both parties. The Board notes that the uses are the same in this instance, so that the enhanced buffering provided for the single-family homes need not necessarily be provided between these two similar uses.

8. The Petitioner proposes that all of the development will be completed in one phase, thus exceeding the requirements of Section 127C.3.d of the HCZR, which requires that no more than 50 percent of the acreage designated for residential land use be recorded prior to commencement of employment area plan recordation.

9. Petitioner's land planner, Mr. Alexander, testified that the two proposed focal points on the PDP, as described above, would provide a distinct focus for the Mixed Use Development. The Board finds that the focal points tie the adjacent centrally located retail uses into the surrounding residential uses and thus would provide at least one required focal point of sufficient size and variety of land uses to be a distinct focus for this MXD community.

10. 9.46 acres of Open Space Land Use is proposed on the PDP. More than 2/3 of this Open Space area, approximately 6.72 acres, would be dedicated to the Howard County Department of Recreation and Parks. In addition, the PDP proposes 2.74 acres of planned community open space. DPZ's findings on the open space and environmental requirements, findings that the Board agrees with and adopts as its own, were that Petitioner proposed on its plan an open space network that will connect to existing open space adjoining the development, that it protects major environmental

features and that it ensures that at least 10 percent of the gross open space is usable for some type of active recreational activity. DPZ also found that the PDP would be subject to all current environmental regulations at the Comprehensive Sketch Plan stage of the MXD development, and that the PDP and Criteria are consistent with all applicable environmental policies and requirements.

The Board also accepts the information presented by DPZ that the subject property may be served by public water and sewer and that the subject property is in the Metropolitan District and is in the Existing Service Area for Water and the 0 to 5 Year Service Area for Sewer in the Howard County Water and Sewerage Plan.

11. Mr. Alexander noted that a pedestrian/bicycle pathway system was proposed on the plan, including a fitness walk proposed as part of the outdoor fitness facilities. Mr. Alexander noted that the details of the pathway system will be implemented through the CSP and SDP stages of the proposed development.

12. Mr. Rutter testified that the plan provides the opportunity for accommodating public transit initiatives, including the possible changing of the transit stops of the "Yellow Line" of Howard Transit to include the proposed focal point.

13. Mr. Rutter testified that the Design Guidelines, which the Petitioner voluntarily submitted with the petition, were not intended to be a set of mandatory requirements to be placed on the proposed development as part of the zoning approval, but instead were intended to set a tone for the type of desired development as to various concerns such as lighting, access, signage and street furniture, and could become private design standards or covenants enforceable by a future homeowners association.

14. Mr. Rutter testified that the subject property's proposed development would be phased in coordination with the County's construction of Ellicott Center Drive between its present terminus and Rogers Avenue, which would precede the development, and the County's planned improvement of Rogers Avenue by capital project. The Rogers Avenue improvement capital project would take into consideration the new Ellicott Center Drive/Rogers Avenue intersection, a potential future stoplight at that intersection, pedestrian access improvements from the developments across Rogers Avenue and considerations for any possible sidewalk system along Rogers Avenue.

15. The Board finds that the Petitioner has established that its PDP and Criteria, with the conditions, commitments and revisions made by the Petitioner as noted in this decision, will satisfy all of the criteria of Section 127D.7 of the HCZR, and the Board makes the following findings of fact, in addition to those findings previously made in this decision, based in part on DPZ's findings and evaluations of the PDP as contained in the Technical Staff Report and reviewing agency comments which the Board adopts as its own, as to the criteria of Section 127D.7 of the HCZR:

a. The plan and criteria will foster orderly growth, integration of uses, and development consistent with the purposes of the MXD District, pursuant to Section 127D.7.a, for all the reasons specified findings 2, 5- 7 and 14.

b. The plan will be phased to conform to the phasing of State and County road improvements, including those on the General Plan, needed to serve the development, pursuant to Section 127D.7.b. for all the reasons specified in finding 14.

The County's construction of Ellicott Center Drive will connect the roads necessary to serve the development, existing Ellicott Center Drive and Rogers Avenue. The property, once developed, will have good access to US 40 and US 29, and the development will be required to meet the APFO roads test.

c. The proposed development will occur all in one staging plan based on finding 8 so that the provisions of Section 127D.7.c. of the HCZR, which establish the earliest reasonable time frame for development of the focal point and the proportionate mix of land uses proposed on the PDP for the reasons stated in the finding, are inapplicable.

d. The plan and criteria on the PDP are potentially consistent with all applicable environmental policies and requirement pursuant to Section 127D.7.d. of the HCZR based on findings 2, 7 and 10, although this compliance will be ensured through the later stages of the development process;

e. The minimum area, proportion of uses and the density or intensity of development will be consistent with the requirements of Section 127C. pursuant to Section 127D.7.e. of the HCZR based on findings 1, 2, 5-7 and 10;

f. The relative proportions of residential, employment, and open space uses will be appropriate to the area surrounding the MXD District pursuant to Section 127D.7.f. of the HCZR based on findings 2, 5-7 and 10;

g. The development proposed on the PDP pursuant to Section 127D.7.g of the HCZR will include at least one integrated focal point of sufficient size and variety of land uses to be a distinct focus for the community based on findings 2 and 9;

h. The location of land designated on the PDP for retail centers pursuant to Section 127D.7.h. of the HCZR is appropriate for retail and personal service uses which will serve the local neighborhood or community based on findings 5 and 6. The Board finds that the proposed size of the retail area at its present size and intensity is entirely appropriate given the minimal size of the MXD development, and the proximity of a substantial commercial corridor on US 40.

i. The PDP, pursuant to Section 127D.7.i. of the HCZR, will provide a mix of housing uses based on findings 2, 3 and 7. The Board specifically notes that the 6.36 dwelling unit/gross acre density on the PDP ensures the provision of 17 M.I.H.U. as part of the housing mix, and that 32 age-restricted adult housing units will be provided as well;

j. The proposed PDP, pursuant to Section 127D.7.j. of the HCZR, enables the opportunity for public transit stops to be integrated within the community based finding 12;

k. The PDP, pursuant to Section 127D.7.k of the HCZR, proposes an intensity and scale of land use, as determined by proposed densities, FAR limits, and other requirements that is appropriate in relation to the environmental constraints of the site and the character of existing and planned development in the vicinity of the site based on all of the findings.

l. The PDP, pursuant to Section 127D. 7. l. of the HCZR, proposes development that will be compatible with existing and planned vicinal land uses based on findings 2-7, 10 and 14. In particular, the Board finds that the Petitioner, pursuant to

Section 127D.7.I.(1) through (7), has, as revised, utilized the methods provided in Section 127D.7. to ensure the proper relationship between the MXD development and surrounding uses as indicated in finding 7, so that the PDP: (a) protects and enhances natural features on its boundary to provide a natural edge to the development through the location of Open Space Land Use at several locations at the edge of the subject property; (b) through its Open Space Land Use areas, provides buffering between the subject property and adjacent land uses when appropriate, and provides a connection to open space areas on adjoining land when possible; and (c) through the land uses proposed at its edge, provides land uses as similar to the adjacent land uses outside the development;

m. The PDP's open space network pursuant to Section 127.D.7.m.(1) through (4) of the HCZR will connect to existing and planned open space adjoining the development, protect major environmental features such as large forest stands or stream valleys, provide adequate useable land in appropriate locations for parks or recreational facilities, and will provide appropriate sites for needed public facilities based on finding 10;

n. The PDP, pursuant to Section 127D.7.n. of the HCZR, will provide housing and jobs within pedestrian access of each other based on findings 2, 5, 6, 9, 12 and 14.

#### CONCLUSIONS OF LAW

1. The proposed PDP meets all of the minimum requirements of Section 127C of the Howard County Zoning Regulations, including requirements as to water and sewer

service, minimum area of Preliminary Development Plan, proportion of uses, permitted uses, accessory uses, residential density, requirements for employment uses, requirements for open space, bulk regulations, and other requirements. The Board accepts and adopts the Department of Planning and Zoning's evaluation of the petition according to Section 127C in addition to its own findings in making the above findings and conclusions with respect to the criteria of Section 127C and D of the HCZR.

2. The above-described PDP has met all of the criteria for approval of a preliminary development plan contained in Section 127D.7 of the Howard County Zoning Regulations, as specified in the above findings, subject to the Petitioner's commitments, revisions to the PDP and Criteria, including the revisions in response to the comments of DPZ and the Planning Board as noted herein.

3. The Board, based on the PDP's satisfaction of the several criteria for approval as contained in the Zoning Regulations, concludes that the proposed PDP, as committed to and/or revised by the Petitioner, as provided in Conclusion of Law 2, shall be approved subject to those commitments and revisions.

For the foregoing reasons, the Zoning Board of Howard County, Maryland on this 6<sup>th</sup> day of September, 2011, hereby **GRANTS** the Petitioner's request for approval of the PDP and Criteria as described herein, for the approximately 26.41 acre subject property located in the POR-MXD-6 Zoning District, as provided herein.

ATTEST:

ZONING BOARD OF HOWARD COUNTY

Robin Regner

Robin Regner  
Administrative Assistant

Courtney Watson

Courtney Watson, Chairperson

PREPARED BY HOWARD COUNTY  
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Did Not Participate  
Greg Fox